

# SHER EDLING LLP

PROTECTING PEOPLE AND THE PLANET

June 17, 2021

## VIA ECF

The Honorable Roanne L. Mann  
United States Magistrate Judge  
United States District Court  
for the Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

Re: Joint Status Report: *Suffolk County Water Authority v. The Dow Chemical Co. et al.*,  
No. 2:17-cv-6980-NG-RLM, and *Related Cases*

Dear Judge Mann:

On behalf of all 32 Parties in the referenced cases, and consistent with the status report provided to the Court on June 3, 2021 (ECF 180), the Parties update below their ongoing conferrals regarding certain discovery items referenced in the prior two status reports (ECF 179, 180).

Following several meet-and-confer information exchanges and Plaintiffs' production of various materials, the Parties have resolved outstanding issues regarding: (1) groundwater models; (2) SCWA's groundwater testing databases; and (3) six Plaintiffs' drinking water distribution models (SCWA, Carle Place, Jericho, Mineola, NYAW, and Port Washington). To the extent Defendants' consultants encounter technical issues accessing recently produced groundwater testing databases or drinking water distribution models, the Parties have agreed to work together to resolve such technical issues.

Each Plaintiff has confirmed it has performed a reasonably diligent search for, and believes it has produced, all non-privileged, responsive documents relating to the investigation of dioxane in its wells, and that it does not have historic investigative documents pertaining to TCA. One plaintiff, Hicksville, is completing its privilege review and, to the extent any additional non-privileged, responsive "historic investigatory" documents may be identified in that review, Hicksville expects to produce them by June 30, 2021. One plaintiff, NYAW, committed to searching its files again to ensure that it has produced all non-privileged, responsive documents relating to its investigation of dioxane in their wells, including historic investigative files.

Each Plaintiff has also represented that it performed a reasonably diligent search for documents and information responsive to Defendants' interrogatory and that its current interrogatory response (which include original responses by all Plaintiffs in July 2020 and supplemental responses by NYAW on April 16, 2021, and again on June 11, 2021, and Hicksville on June 11, 2021) discloses to Defendants the identities of all known and suspected potential sources of dioxane contamination in its wells of which it is aware, and that it will supplement in accordance with Rule 26 as to any future-acquired additional responsive information. In addition, each Plaintiff has provided an updated list of wells with dioxane detections or has confirmed that the list previously produced remains accurate.



Below are the issues that remain open.

**Well Files:** SCWA and all additional Plaintiffs represented by Sher Edling, as well as those additional Plaintiffs' third-party engineers, finished their production of all digitized well permits and water supply applications pertaining to wells contaminated with dioxane on June 14, 2021. Those Plaintiffs are working to determine the extent to which additional responsive well permits and water supply applications may exist only in hard copy form (although some Plaintiffs have already produced those). To the extent NYAW or Hicksville are able to locate any additional well file documents, they have committed to produce them by June 30. To the extent Defendants believe they need additional "well files," the Parties will confer to determine what those may be, and whether additional hard copy collections or inspections may be necessary.

**Drinking Water Distribution Models:** Nine Plaintiffs (Bethpage, Garden City Park, Hicksville, Huntington/Dix Hills, Manhasset-Lakeville, Plainview, Roslyn, South Farmingdale, and Western Nassau) with distribution models in the possession of their third-party consultant, H2M, intend to produce their distribution modeling files by June 25.

**Emails and Supplemental Document Collections:** The Parties are conferring regarding the remaining review of previously collected documents for privilege and the collection and review of supplemental documents generated and identified since the last collection dates, including emails. To expedite this process, subject to Plaintiffs providing Defendants with some clarity on a discrete issue relating to analytical data they previously provided, Defendants have agreed to certain amendments that Plaintiffs proposed to the Parties' previously agreed-upon search terms. Plaintiffs project SCWA's supplemental collection and production will be complete by August 6 under current circumstances. The 26 non-SCWA Plaintiffs are targeting completion of their productions by August 6. Defendants have requested that Non-SCWA Plaintiffs provide an approximate volume of remaining documents likely to be produced by them in such completion, and that they do so by July 9, 2021 to permit the Parties to address the issue in the July 16, 2021 status update to the Court, including any adjustment of the August 6, 2021 completion date or production staging proposal, if necessary. Non-SCWA Plaintiffs have agreed to do so.

\* \* \*

The Parties continue their efforts to resolve the outstanding issues set forth above. The Parties have agreed to provide the Court with a further brief update on the status of open issues on or before July 16, 2021.

The Parties are available to discuss the issues set forth above, or any other issues, at the Court's convenience.

Respectfully submitted,

/s/ Joel A. Blanchet  
JOEL ALAN BLANCHET  
jblanchet@phillipslytle.com

/s/ Stephanie D. Biehl  
STEPHANIE D. BIEHL  
stephanie@sheredling.com



ANDREW P. DEVINE  
adevine@phillipslytle.com

**PHILLIPS LYTLE LLP**

One Canalside  
125 Main Street  
Buffalo, NY 14203  
(716) 847-7050

KEVIN T. VAN WART  
kevinvanwart@kirkland.com

NADER R. BOULOS

nboulos@kirkland.com

**KIRKLAND & ELLIS LLP**

300 North LaSalle  
Chicago, IL 60654  
(312) 862-2000

*Attorneys for Defendant The Dow Chemical Company*

ROBB W. PATRYK

robb.patryk@hugheshubbard.com

FARANAK SHARON TABATABAI

fara.tabatabai@hugheshubbard.com

**HUGHES HUBBARD & REED LLP**

One Battery Park Plaza  
New York, NY 10004  
(212) 837-6000

*Attorneys for Defendant Ferro Corporation*

STEPHEN C. DILLARD, *pro hac vice*  
steve.dillard@nortonrosefulbright.com

**NORTON ROSE FULBRIGHT US LLP**

1301 McKinney, Suite 5100  
Houston, Texas 77010  
(713) 651-5151

FELICE B. GALANT

felice.galant@nortonrosefulbright.com

**NORTON ROSE FULBRIGHT US LLP**

1301 Avenue of the Americas  
New York, NY 10019  
(212) 318-3000

MATTHEW K. EDLING

matt@sheredling.com

VICTOR M. SHER

vic@sheredling.com

KATIE H. JONES

katie@sheredling.com

**SHER EDLING LLP**

100 Montgomery St. Suite 1410  
San Francisco, CA 94104  
(628) 231-2500

*Attorneys for Plaintiffs<sup>1</sup>*

SCOTT MARTIN

smartin@hausfeld.com

Jeanette Bayoumi

jbayoumi@hausfeld.com

**HAUSFELD LLP**

33 Whitehall St., 14th Floor  
New York, NY 10004  
(646) 357-1100

RICHARD S. LEWIS

rlewis@hausfeld.com

**HAUSFELD LLP**

1700 K Street, NW, Suite 650  
Washington, DC 20006  
(202) 540-7200

JAMES GOTZ

jgotz@hausfeld.com

**HAUSFELD LLP**

One Marina Park Drive, Suite 1410  
Boston, MA 02210  
(617) 207-0600

KATIE R. BERAN

kberan@hausfeld.com

**HAUSFELD LLP**

325 Chestnut Street, Suite 900  
Philadelphia, PA 19106  
(215) 985-3270

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<sup>1</sup> The Sher Edling firm represents all Plaintiffs in these related cases except Plaintiffs New York American Water (19-cv-2150) and Hicksville Water District (19-cv-5632).



*Attorneys for Defendant Vulcan Materials Company*

MEGAN R. BRILLAULT  
mbrillault@bdlaw.com  
DANIEL M. KRAININ  
dkrainin@bdlaw.com  
PAULA J. SCHAUWECKER  
pschauwecker@bdlaw.com  
**BEVERIDGE & DIAMOND P.C.**  
477 Madison Avenue  
15th Floor  
New York, NY 10022  
212-702-5400

*Attorneys for Defendant Shell Oil Company*

DAVID J. LENDER  
david.lender@weil.com  
JED PAUL WINER  
jed.winer@weil.com  
**WEIL, GOTSHAL & MANGES, LLP**  
767 Fifth Avenue  
New York, NY 10153  
212-310-8000

DIANE P. SULLIVAN  
diane.sullivan@weil.com  
**WEIL GOTSHAL & MANGES LLP**  
17 Hulfish Street, Suite 201  
Princeton, NJ 08542  
609-986-1120

*Attorneys for Defendant The Procter & Gamble Company*

*Attorneys for Plaintiff Suffolk County Water Authority*

FRANK R. SCHIRIPA  
fschiripa@hrsclaw.com  
MICHAEL A. ROSE  
mr@hachroselaw.com  
HILLARY M. NAPPI  
hnappi@hrsclaw.com  
**HACH ROSE SCHIRIPA & CHEVERIE, LLP**  
112 Madison Avenue - 10th Floor  
New York, New York 10016  
(212) 213-8311

J. NIXON DANIEL, III  
jnd@beggsllane.com  
MARY JANE BASS  
mjb@beggsllane.com  
**BEGGS & LANE, RLLP**  
501 Commendencia Street  
Pensacola, FL 32502  
850-469-3306

T. ROE FRAZER, II  
roe@frazer.law  
THOMAS ROE FRAZER, III  
trex@frazer.law  
W. MATTHEW PETTIT  
mpettit@frazer.law  
**FRAZER PLC**  
30 Burton Hills Blvd., Suite 450  
Nashville, TN 37215  
615-647-0987

*Attorneys for Plaintiff New York American Water Company, Inc.*

Paul J. Napoli  
pnapoli@nsprlaw.com  
Lilia Factor  
lfactor@napolilaw.com  
**NAPOLI SHKOLNIK PLLC**  
360 Lexington Avenue, 11th Floor  
New York, NY 10017  
(212) 397-1000



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*Attorneys for Plaintiff Hicksville Water  
District*

cc: All Counsel of Record (by ECF)